IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21061 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADANA GADH SEVA SAHAKARI MANDALI LTD - Petitioner(s)
Versus
ADDITIONAL REGISTRAR (APPEAL) CO-OPERATIVE SOCIETIES & 3 - Respondent(s)

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Appearance :

MR DK ACHARYA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 -2,
MR HARIN P RAVAL for Respondent(s) : 3,
MS ML SHAH, AGP for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/10/2006

ORAL JUDGMENT

1. In the present petition, the petitioner-Seva

Sahakari Mandali has challenged an order dated 29-6-2002 passed by the District Registrar ordering winding up of the petitioner-society in exercise of powers under sub-section(1) of Section 107 of the Gujarat Cooperative Societies Act(here-in-after referred to as “the said Act”). Before passing the said order a show cause notice came to be issued against the petitioner-society. In the show cause notice, several grounds were pointed out. It was stated that society is not functional since a long time. Proper procedure as required under the by-laws is not being carried out. No new members are enrolled. There are irregularities in the accounts of the society. The management of the society is reflected only on paper. Members of the Managing Committee do not have any interest in running the society. The petitioner-society was therefore, called upon to show cause why winding up order should not be passed under Section 107 of the said Act.

2. In response to the show cause notice, the

society represented to the District Registrar in October 2000. Though the society opposed the proposal for winding up, it may be noted that in the reply, the society did not refute the allegation that since since long time the society is not in operational condition.

3. Eventually District Registrar passed his impugned order on 29-6-2002. In the order, he recorded that the society is not operational since 10 years; that the society is unable to repay its debts to the Bank; accumulated debts of the society have reached Rs. 33,61,180/- and losses are mounting. On these and other grounds, the District Registrar was pleased to pass the said order of winding up the society and appointed a Liquidator for the said purpose.

4. The society challenged the order of District Registrar by filing Appeal No.71/2002. The appeal however, came to be rejected by an order dated 18-7-2003. Though appeal memo has not been produced by the petitioner on record, upon

perusal of the appellate order, the society does not appear to have raised any dispute about the factual conclusions of the District Registrar that society is not operational since 10 years.

5. Against the appellate order, the petitioner approached the State Government by filing revision application which also came to be rejected on 15-9-2005. The State Government in the impugned order recorded that after filing of the revision application in the year 2003, revision application was adjourned from time to time to enable the society to represent its case. However, on none of these occasions, the society was represented. Under the circumstances, upon perusal of the record, revision application came to be rejected.

6. I have heard learned advocates appearing for the parties. I do not find any reason to interfere with the impugned orders. It is true that by virtue of an order dated 31-3-2006 passed by this Court in the present petition as well as in

Appeal From Order No. 48/2006, the Society could have access to a sum of Rs. 19,75,000/- (approximately) and it is stated that the said amount so received by the society was immediately paid up to the bank from which the society had taken the loan. Fact remains that the authorities had not passed the impugned orders solely on the ground of financial instability of the society.

7. One of the main grounds accepted by the District Registrar was that the society is not functioning since 10 years. There were other discrepancies and irregularities also noticed. The society does not seem to have laid evidence to demonstrate before the authorities that any worthwhile business was transacted by the society during the said period. Before this Court also, no material is pointed out to dislodge these findings of fact. Additionally, I find that even after payment of the same sum, the financial position of the society would remain precarious. On behalf of the society, it

could not be shown as to how the society would be in a position to repay the remaining amount of the outstanding dues which, by now, would have inflated especially when the society had remained completely nonoperational for over 10 years. Before the Government though revision application was filed by the petitioner-society, there was no participation at all for more than two years. This further confirms the view of the authorities that members of the society are not interested in its functioning.

8. Considering all these aspects of the matter, I do not find it a proper case to interfere in writ jurisdiction.

9. The petition is therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(raghu)